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Stop Code: 1170

Mar 28 7:53 AM '97

To: Rudolfo Luhan Baca Lauren J. Belvin (Ginger), - Commissioner James H. Quello

Date: Thu, Mar 27, 1997 • 10:37 AM

Pages, including cover: 6

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Attention: Please deliver this document to Secretary William Caton. We have been unable to fax this document or e-mail to mr. Caton. Your help will be greatly appreciated. Don Lounibos

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MAR 27 1997

Federal Communications Commission
Office of Secretary

March 25, 1997

Attention: Federal Communications Commission
Office of the Secretary William Caton

From: ISTA, President Don Lounibos

Subject: Comment: Order, Memorandum Opinion and Order and Notice of Proposed Rule Making WT Docket No. 97-82.

Issue: 4. Installment Payments

a. Late Payments

69. **Background.** for the broadband PCS F Block auction, we amended the terms of the installment payment plans to provide for late payment fees. Thus, when licensees are late in their scheduled installment payments, the Commission will charge a late payment fee equal to five percent (5%) of the amount of the past due payment. We instituted this fee because we concluded that, without it, licensees may not have adequate financial incentives to make installment payments on time and may attempt to maximize their cash flow at the government's expense by paying late.

- We believe that Late payment fee's equal to Five Percent of the amount of the past due payment are excessive and extremely punitive considering the high risk evolved in developing a highly speculative business such as IVDS by groups of minority's, women, and small business.
- IVDS rule were conceived based on the needs of minority, women, and small business to enable these entities to enter into the business of telecommunications.
- IVDS was touted as the low cost beginning way to "access ramp to the information superhighway".
- The five second duty cycle restriction has scared many investor away from IVDS. The high cost of equipment to overcome duty cycle has proven to be overly excessive in price, does not work, and in some cases no longer available.
- The defaulting of minority, women, and small business will result in only large company's being able to afford telecommunication licenses. This will result in large monopoly's controlling FCC Licenses.
- We believe that the rules for PCS have a great amount of disparity in relationship to the rules for IVDS. PCS has a license term of ten years and a portion of this term has already been negotiated. IVDS has a license term of five years and the IVDS License Holders Committee has tried unsuccessfully to have these term negotiated.



- PCS rules should not be commingle with IVDS or SMR or any other spectrum. The terms of license ownership for PCS are ten years and the terms for IVDS are five years. If from the first auction the terms of license ownership for different spectrum were equal it would make sense to extend the treatment of those changes equally since this is not the case it seem unfair at this time to make major changes to the repayment schedule that would have far reach repercussions across the board for all license holder. We must keep it clear that IVDS has been treated as a "purple cow" since the first auction. IVDS should be treated separately at this time.
- We believe that the terms of repayment for IVDS should be extended for a period of Ten years to be equal to the terms of repayment for PCS.
- The charge excessive rates will only discourage future investor and force many current license holders into default.
- The large company's may be able to afford the penalties but small company's will not survive "draconian" rates.
- We believe that it is unfair at this point of license ownership to bait and switch from the original terms of the agreement. If you have contracted under one set of terms (financial) and suddenly change the terms of the agreement midstream both parties should legally sign off on this agreement.
- We believe that the terms of the banking agreement should be handled by a banking institution not the FCC. The FCC should recommend to the banking institution the terms of ownership and the length of ownership and the title of ownership, but the banking intuition should determine terms, length of the repayment schedule the ability of the license holder to participate in the business of owning FCC licenses and not the other way around. Let the banking institution determine the penalty rate not the FCC.
- We believe that by letting the Banking intuition handle the billing and collection of license's, future potential bidders will not be apprehensive about entering into the action process.
- **We tentatively conclude that such a late payment provision is unnecessary to ensure that licensees have an adequate financial incentive to make installment payments on time.**

b. Grace Periods

71. Background. Section 1.2110(e)(4)(ii) of the commission's rules provides that interests that accrues during a grace period will be amortized over the remaining term of the license. Amortizing interest in this way has the effect of changing the amount of all future payments and requiring the Commission, or its designee, to generate a new payment schedule for the license. changing the amount of the installment payment has, in turn, created uncertainty about the interest schedule, and increased the administrative burden by requiring formulation of a new amortization schedule.

We believe simply and clearly the FCC should not be in the business of providing banking services. Banking services should be provided by banking institution's who's job it is to provide the best and most efficient services available to its customers.



72. Section 1.2110(e)(4)(ii) also states that in considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. Under this rule, licensees are required to come before the Commission with a filing as well as financial information such as an income statement or balance sheet, in the case of financial distress, to provide the necessary information for the Commission to make its ruling. Licensees are then required to wait for a ruling by the Commission before knowing whether a grace period has been granted or denied. This could place licensees in a position of uncertainty if they are seeking to restructure other debt contingent upon the results of the Commission's grace period ruling.

- We believe that in order to avoid the potential (current) problems associated with changing the amount of installment payments, we recommend the current terms of Section 1.2110(e)(4)(ii) remain as they are pending the results of an independent investigator.
- We would recommend to the Commission that the terms of IVDS repayment schedule be held in suspension until the recommendation of an independent investigation can be concluded.
- Further to simplify the grace period procedures, we propose that the commission eliminate the whole idea of a grace period and put the billing and collection responsibly in the hands of independent banking institutions.
- We believe that the Suggestion of the FCC: **"if a licensee did not make payment on an installment obligation within 90 days of its due date then the licensee would automatically receive an additional 90 days to make the payment contingent upon receipt of the 5 percent late payment fee proposed above plus an additional late payment fee of 10 percent. The late payment fee that we propose here is greater than the 5 percent late payment fee that we propose for non-grace period late installment payments because we envision the grace period as an extraordinary remedy and wish to encourage licensee to seek private market solutions to their capital problems before the payment due date or at a minimum within 90 days of the due date"**, is "excessive and Draconian".
- We reiterate the above suggestion let the billing and collection process be solved by the private market forces. Let the recommendations of an independent investigator determine the best course of procedure.
- We believe the Five (5%) : Ten (10%) solution is greatly excessive and punitive to the IVDS License holders based on the speculative nature of the intended use of the spectrum as proclaimed at the IVDS auctions by Reed Hundt And by the excessive regulation placed on the IVDS Spectrum (i.e. Duty Cycle).
- **"Under this proposal licensees would not be required to submit a filing to receive a grace period"** under current procedure license holders are not filing for grace periods. We believe that the whole concept of grace period should be eliminated and that the private banking standard commercial practices should be established separate from the current FCC billing and collection process



- Any licensee that did not make full payment of all amounts, including a total late payment fee of 15 percent, within 180 days of the payment due date would have its license automatically canceled as provided in Section 1.2110(e)(4)(ii). We believe that these terms are "excessive and draconian" in consideration of the minority, women owned and small business status of the IVDS License Holders. This will force many IVDS license holders to default and open the door to large investors that have not spent the last 3 years doing the ground work of pioneering the IVDS spectrum to come into the industry with less risk. We reiterate that an independent investigator would best address the current state of the IVDS Industry.

c. **Default on Installment Payments**

75. Background. We also seek comment on whether licensees that default on installment payment obligations should be subject to the default payment provisions outlined in Section 1.2104(g), i.e., the difference between the defaulting winner's bid and the subsequent winning bid plus 3 percent of the lesser of these amounts. Sections 1.2110(e)(1) and 1.2110(e)(2) provide that applicants eligible for installment payments will be liable for such a payment if they fail to remit either their initial or final down payment. Section 1.2110(e)(4)(iii) provides that following the expiration of any grace period without successful resumption of payment or upon denial of a grace period request or upon default with no such request submitted the license of an entity paying on an installment basis will be canceled automatically. This section does not state however that under these circumstances the licensee will be liable for the default payment set forth in Section 1.2104(g)

- We believe that this provision should remain in place.

76. A Cross-default provision would specify that if a licensee defaults on one installment payment loan, it would also default on any other installment payment loans it holds. These provision are standard in credit-related agreements.

- We strongly recommend that the issuance of a one strike your out clause should be eliminated. IVDS has global issues that must be address separately either with special treatment, independent investigation, or private legal remedies. It is premature to bundle other business's, other licenses, and other lease fee agreements or license payments with one separate agreement. The legal ramification of doing so fall upon existing legal precedence that have already been established.
- The one strike your out approach is unfair to, minority, women, and small business's who are new to the industry that has no equipment and no applications.
- We believe that if someone has an unsuccessful business venture they should not be precluded from ever investing in a business venture again.
- We believe this would be to severe and Draconian for the amount of risk involved



- We believe that such measures would result in large company's defaulting which would result in a loss of income to the government.
- We would suggest an alternative to the one strike your out. We would suggest a cooling off period, a period of three years, that defaulter would be precluded from participating in Auctions

Recommendation: The IVDS industry should not be bundled into the PCS industry. It is to far down stream to treat IVDS the same way as PCS. The whole process of billing and collection needs to be analyzed by an independent counsel. This council should be made up of lawyer, tax experts, and banking specialist. At this time it is premature to bundle spectrum into one solution having the specific problems particular to past regulations. Time will only tell what solution was correct.